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Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

02-278

SEP 25 2003

Control No. 0302693/kah

The Honorable Bob Graham
United States Senator
2252 Killearn Center Boulevard
Suite 300
Tallahassee, FL 32308

RECEIVED

OCT 10 2003

Federal Communications Commission
Office of the Secretary

Dear Senator Graham:

Thank you for your letter on behalf of your constituent, George Mirabal, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA).

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

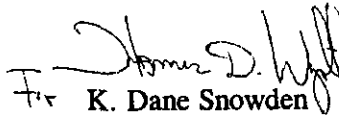
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As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Mr. Mirabal's comments and have placed a copy of his correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

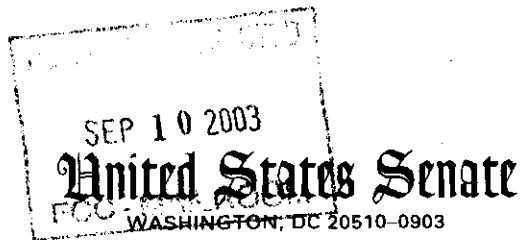
Sincerely,

A handwritten signature in dark ink, appearing to read "K. Dane Snowden".

K. Dane Snowden
Chief
Consumer & Governmental Affairs Bureau

Enclosures

BOB GRAHAM
FLORIDA



September 2, 2003

*COB
TC
(policy)
2693*

Mr. Paul A. Jackson
Director
Federal Communications Commission
Office of Legislative Affairs
445 12th Street Southwest
Washington, D.C. 20554

Dear Mr. Jackson:

Enclosed is a letter from Mr. George Mirabal.

I would appreciate your reviewing the information that has been presented and providing me with your comments. Please address your reply to my state office:

United States Senator Bob Graham
2252 Killearn Center Boulevard, Suite 300
Tallahassee, Florida 323098
Attention: Becky Liner

Telephone: (850) 907-1100
Facsimile: (850) 894-3222

Your cooperation and assistance are greatly appreciated. I look forward to hearing from you soon.

With kind regards,

Sincerely,

United States Senate

BG/bsl

Enclosure

10 SEP 2003 RCVD



August 15, 2003

The Chambers of:

Daytona Beach/Halifax Area

Daytona Beach Shores

DeLand

Holly Hill

Ormond Beach

Port Orange/South Daytona

Southeast Volusia

West Volusia

Senator Bob Graham
2252 Kilearn Center Blvd.
Tallahssee, FL 32309

Dear Senator Graham:

I am writing on behalf of the Volusia County Chamber Alliance, a group of eight chambers of commerce in Volusia County, Florida.

We have great concerns regarding the recent actions taken by the Federal Communications Commission (FCC) to amend the regulations that amend the Telephone Consumer Protection Act of 1991 (TCPA). By doing away with the "established business relationship" provision, these new regulations will create a significant economic and labor-intensive burden for chambers of commerce.

This clearly falls into the category of a "law of unintended consequences" as we are sure that the FCC's goal was not to adversely affect business organizations.

While the proposed FCC rule changes may be suitable for residential telephone numbers that the new "do not call registry" provides, they are certainly not acceptable for chamber-to-member facsimile communications. Chambers rely on faxes as a prime source of communications to meet the needs of their members.

With penalties reaching up to \$11,000 per unauthorized fax, this is a burden that few chambers can financially endure. These proposed FCC rules changes are a prime example of an idea where the disadvantages far outweigh the benefits.

On behalf of the over 2,000 businesses in the Volusia County area, the Volusia County Chamber Alliance is requesting that the FCC halt their efforts to change the current TCPA.

Thank you for your consideration.

Sincerely,

George Mirabal
President

Daytona Beach & Halifax Area Chamber of Commerce